

IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE: : CASE NO. 12-51251  
MICHAEL BERNARD GERALD , : CHAPTER: 13  
LORI JAN GERALD, : JUDGE: BARBARA ELLIS-MONRO  
Debtor(s). :  
PENNYSMAC CORP., BY PENNYSMAC :  
LOAN SERVICES, LLC, ITS SERVICING :  
AGENT , : CONTESTED MATTER  
Movant, :  
v. :  
MICHAEL BERNARD GERALD , :  
LORI JAN GERALD, :  
MARY IDA TOWNSON, Trustee, :  
Respondent(s). :  
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**NOTICE OF HEARING**

**PLEASE TAKE NOTICE** that the Movant named above has filed a Motion for Relief from the Automatic Stay and related papers with the Court seeking an Order Granting Relief from the Automatic Stay.

**PLEASE TAKE FURTHER NOTICE** that the Court will hold a hearing on the Motion in Courtroom 1402, United States Courthouse, 75 Spring Street S.W., Atlanta, Georgia, at 9:30 A.M., on July 22, 2014.

Your rights may be affected by the Court's ruling on these pleadings. You should read these pleadings carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the Court to grant the relief sought in these pleadings, or if you want the Court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the pleading with the Clerk at the address stated below, but you are not required to do so. If you file

a written response, you must attach a certificate stating when, how, and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk at least two business days before the hearing. The address of the Clerk's Office is: Clerk, U.S. Bankruptcy Court, 75 Spring St SW # 1340, Atlanta, GA 30303. You must also mail a copy of your response to the undersigned at the address stated below.

If a hearing on the motion for relief from the automatic stay cannot be held within thirty (30) days, Movant waives the requirement for holding a preliminary hearing within thirty days of filing the motion and agrees to a hearing on the earliest possible date. If a final decision cannot be rendered by the Court within sixty (60) days of the date of the request, Movant waives the requirement that a final decision be issued within that period. Movant consents to the automatic stay remaining in effect until the Court orders otherwise.

/s/ Richard H. Siegel  
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MOTION FOR RELIEF FROM THE AUTOMATIC STAY

COMES NOW Movant named above and shows this Court the following:

1.

This Motion is made pursuant to Section 362(d) of the Bankruptcy Code for relief from the automatic stay for all purposes allowed by law and the contract between the parties, including, but not limited to, the right to foreclose on certain real property by a private power of sale contained in a certain Security Deed.

2.

Movant is the holder or the servicer of a loan secured by certain real property in which the Debtor(s) have an interest. Said real property is security for a Promissory Note, and is commonly known as 1774 Water Springs Way, Dacula, GA 30019.

3.

There has been a default in mortgage payments which have come due since this case was filed. Through the month of June 2014, twenty-four (24) post-petition payments have been missed. Since the date of filing of this case, the Movant has also incurred attorney's fees and costs in the sum of \$1,026.00. There is presently the amount of \$13.28 in suspense which is available as a credit.

4.

The unpaid principal balance is \$357,582.15, and interest is due thereon in accordance with the Promissory Note.

5.

Because of the default and clear inability to make all required payments, Movant is not adequately protected.

6.

Because the Loan Documents so provide, Movant is entitled to reasonable attorney's fees.

7.

Movant requests that in the event the Motion is granted, the Trustee be ordered to cease funding any balance of Movant's claim and that Fed. R. Bank. P. 3002.1 be held not to apply to Movant, its successors and/or assigns, as Movant's claim would not be provided for in the Plan pursuant to Section 1322(b)(5) of the Code.

8.

Movant requests that the provisions of Fed. R. Bankr. P 4001(a)(3) be waived.

WHEREFORE, Movant prays for an Order lifting the automatic stay, authorizing it to proceed with the exercise of its private power of sale and to foreclosure under its Loan Documents and appropriate state statutes, and for an award of reasonable attorney's fees. Movant also prays that Fed. R. Bankr. P. 3002.1 be held not applicable in accordance with the request hereinbefore, that Fed. R. Bankr. P. 4001(a)(3) be waived, and for such other and further relief as is just and equitable.

/s/ Richard H. Siegel  
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**Certificate of Service**

I certify that I am over the age of 18 and that on the date written below a copy of the foregoing Motion for Relief from the Automatic Stay and Notice of Hearing was served by email or by first class U.S. Mail, with adequate postage prepaid on the following persons or entities at the addresses stated:

The following parties have been served via email:

D. Scott McPherson [georgialegalclinic@yahoo.com](mailto:georgialegalclinic@yahoo.com)

Mary Ida Townson

The following parties have been served via U.S. Mail:

Michael Bernard Gerald  
1774 Water Springs Way  
Dacula, GA 30019

Lori Jan Gerald  
1774 Water Springs Way  
Dacula, GA 30019

Dated: June 27, 2014

/s/ Richard H. Siegel  
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